

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.589 OF 2006

Sandeep Balasaheb Shelke & Anr. .. Petitioners.
Vs.
Ramdas Anna Bhagale & Ors. .. Respondents.

Mr.Tusar Kale i/b Uday Warunjikar for the petitioners.
Smt.Anita Agarwal for respondent nos.1 to 3.
Mr.S.V.More A.P.P. for the State.

CORAM : D.B.BHOSALE, J.

DATED : 12TH JULY, 2006

P.C.:

. Heard learned counsel for the petitioners,
learned counsel for respondent nos.1 to 3 and learned
A.P.P. for the State.

2. This petition is directed against the order dated 6th December, 2005 passed in the revision filed by the present petitioners by which the said revision against the order of learned Magistrate has been rejected. The learned Magistrate vide his order dated 26th August, 2005 has transferred Regular Criminal Case No.24/2004 to the Sessions Court for its hearing with Sessions Case No.316/2004. It appears that the cross complaints were filed by the petitioners and the respondents arising from the same incident that occurred on 30.11.2003. Insofar as regular criminal

case no.24/2004 is concerned, it was filed at the instance of respondents under section 324, 326, 504 read with 34 of I.P.C. whereas Sessions Case No.316/2004 came to be filed on the basis of the FIR lodged by one of the petitioners under section 307, 141, 143, 147, 148, 504, 506 read with 34 of I.P.C. The Magistrate by his order dated 26th August, 2005 allowed the application filed by the respondent by the following order:

. "This is an application filed by injured Ramdas Anna Bhegade, Sadashiv Ranba Shelke and Pratap Sadashiv Shelke for transferring this case to the Hon'ble District and Sessions Court as out of the same incidence accused in this case namely Sandip Shelke has lodged complaint against these injured persons and other accused and Cr.No.85/03 was registered in Talegaon Dabhade police station. In the said Cr.Talegaon Dabhade police filed chargesheet for the offence punishable u/s. 307, 341, 143, 147, 148, 149, 504 and 506 r/w of IPC which is committed to Hon'ble Court of District and Sessions Court, Pune. The number of said sessions case is 316/2004. In support of this application, Adv.Nirgudkar for injured persons has produced certified copies of FIR having no.85/2003 and chargesheet of sessions case no.316/2004 at Exh.26 and 27 respectively. Both said documents show that this case and Sessions Case No.316/2004 are arose out of same incidence between same parties and cross cases have been filed by them against each other. Learned APP for State also has no objection for committing this case to Hon'ble Court of Sessions. Adv.Nirgudkar has rightly kept this reliance on a reported case Sudhir and Others Vs. State of Madhya Pradesh, with State of Madhya Pradesh Vs. Lavkush and Others reported in 2001 ALL MR (Cri.) 459 in which it has been observed by their lordship that:

"Though the next case cannot be

committed in accordance with Sec.209 of the Code, the Magistrate, has, nevertheless, power to commit the case to the Court of Sessions, albeit none of the offences involved therein is exclusively triable by the Sessions Court. Section 323 is incorporated in the Code to meet similar cases also that section reads thus:

If in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Sessions, he shall commit it to that Court under the provisions hereinabove contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.

Hence for all above stated reasons, this applications is granted."

3. I perused the order as also the order passed by the Sessions Court in revision. I find absolutely no infirmity in the orders. No prejudice would be caused to the petitioners since both the cases are arising from the same incident. In the circumstances this writ petition is dismissed. Interim order, if any, stands vacated.

(D.B.Bhosale, J.)